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No. 01-731

IN THE SUPREME COURT OF THE UNITED STATES

GERALD GOLDBERG, Executive Officer of the California Franchise Tax Board, Petitioner,

v.

JAMES ELLETT, Respondent.

E. LES SORENSON, Executive Director of the California Sate Board of Equalization, Petitioner

v.

CARMINE ARTIGLIO, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Petitioners, Gerald Goldberg, Executive Officer of the California Franchise Tax Board ("FTB") and E. Les Sorenson, Executive Director of the California State Board of Equalization ("SBE") respectfully submit this Reply in support of their Petition for Writ of Certiorari pursuant to Supreme Court Rule 15 (6).

I. THE OPPOSITION INCORRECTLY CONCLUDES THAT THE TAX INJUNCTION ACT DOES NOT APPLY.

The Tax Injunction Act, 28 U.S.C. § 1341, provides that "[t]he district courts shall not enjoin, suspend, or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." In *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, (1981) this Court said: "[The Tax Injunction Act], and the decisions of this Court which preceded it, reflect the fundamental principle of comity between federal courts and state governments that is essential to 'Our Federalism,' particularly in the area of state taxation." More recently this Court has noted: "The statute, on its face, yields no exception to the jurisdictional bar save where the state remedy is wanting, . . ." (*Arkansas v. Farm Credit Services,* 520 U.S. 821, 823 (1997), and its belief that the Tax Injunction Act requires that federal "courts should adopt a hands-off approach with respect to state tax administration" where there is an adequate remedy at law. *National Private Truck Council v. Oklahoma Tax Comm'n,* 515 U.S. 582, 586 (1995).

Respondent's Opposition Brief ("OB") takes the position that his adversary proceeding in the bankruptcy court does not implicate the Tax Injunction Act. OB at 1. Yet, in support of that contention, he quotes the Ninth Circuit's opinion, which characterizes that adversary proceeding as: "seek[ing] to prohibit [Petitioner] from violating federal bankruptcy law by *collecting the . . . taxes at issue . . . .*." OB at 1, *quoting,* App. 19a (emphasis added). Thus, Respondent's adversary proceeding in bankruptcy court seeks to "enjoin . . . the . . . collection of [a] tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. §1341.

II. CONCLUSION

For the reasons stated in its Petition and in this Reply, Petitioners respectfully submit that their Petition for a Writ of Certiorari should be granted.

Dated: January 31, 2002

Respectfully submitted,

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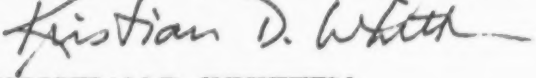

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